



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
AND

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P.(MD)No.1651 of 2015

Prabhu : Petitioner

Vs.

1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise (IX) Department,
Fort.St.George, Chennai-600 009.

2.The Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus to call for the entire records, connected with the detention order of the second respondent in No.159/BCDFGISSSV/2015, dated 20.11.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name Prabhu, S/o.Subbiah, aged about 25 years, now detained in Madurai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Ramar,
Additional Public Prosecutor

ORDER

[Order of the Court was made by P.R.SHIVAKUMAR, J]

The petitioner is the detenu. He was detained by the second respondent by his order in No.159/BCDFGISSSV/2015, dated 20.11.2015, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.776 of 2015 on the file of C5 Karimedu Police Station registered for alleged offences punishable under Sections 302 IPC @ 147, 148, 120(B), 341, 324, 506(ii) and 302 of the Indian Penal Code.

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of the "Goonda" and that his presence at large would be prejudicial to the maintenance of public order and also expressing subjective satisfaction that it was very likely that the detenu would come out on bail in the ground case, passed the impugned detention order. The said order is challenged in the present Habeas Corpus Petition.



3. Though the detention order is sought to be assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that in the ground case, the bail application filed was dismissed and no further bail application was filed, but still the detaining authority expressed subjective satisfaction that there was a real possibility of the detenu coming out on bail in the ground case.

4. In elaboration of the said contention, the learned counsel for the petitioner submits that the subjective satisfaction regarding the real possibility of the detenu coming out on bail in a case, wherein the bail application filed by the petitioner was dismissed and no bail application is pending, cannot be based on any other case in respect of other persons and that the very fact that no bail application is pending will negative the imminent possibility of the detenu coming out on bail, subject to an exception that a co-accused in the very same case placed under similar circumstances has been released on bail.

5. In support of his contention, the learned counsel for the petitioner relies on the Judgment of a Larger Bench of the Hon'ble Supreme Court consisting of three Hon'ble Judges in Rekha Vs. State of Tamil Nadu, reported in (2011) 5 SCC 244, followed by and clarified in Huidrom Konungjao Singh Vs. State of Manipur and others reported in (2012) 7 SCC 181, which has also been followed by a Division Bench of the Madras High Court in H.C.P.No.1154 of 2015, dated 11.08.2015 [Chandrakala Vs. The Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others].

6. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

7. In paragraph No.4 of the grounds of detention, the Detaining Authority, expressing his subjective satisfaction regarding the possibility of the detenu coming out on bail, made the following observation:

"I am also aware that the bail application filed on behalf of Tr.Prabhu, S/o.Subbiah, in the ground case in C5 Karimedu PS Cr.No.776/2015 before the JM No.V, Madurai vide Crl.MP.No.1155/2015 was dismissed on 04.09.2015. Further, the Sponsoring Authority has filed a Special Report dated 19.11.2015 stating that the relatives of Tr.Prabhu S/o.Subbiah are making efforts to file further bail application in the said case, before the court concerned.

I am also aware that the bail was granted by the Principal Sessions Judge, Madurai to one accused Tr.Sethupathi Karthik @ Thakkali Karthik S/o.Boominathan concerned in the case in B6 Jaihindpuram PS Cr.No.482/2014 u/s 147, 148, 341, 294(b), 324, 307, 506(ii) IPC @ 147, 148, 341, 294(b), 324, 307, 506(ii) and 302 IPC vide Crl.MP.No.4973 of 2014, on 25.08.2014 in which offences committed were similar to the ground case.

Hence, I am satisfied that there is a real possibility of his [Tr.Prabhu S/o.Subbiah] coming out on bail, by filing further bail application before the Court concerned, in the ground case in Madurai City C5 Karimedu PS Cr.No.776/2015, since in similar case bail has been granted by Court concerned".



8. The Detaining Authority referred to the fact that the bail application filed in the ground case was dismissed by the learned Judicial Magistrate No.V, Madurai, vide CrI.MP.No.1155 of 2015, on 04.09.2015 and thereafter, no bail application was filed in the ground case, namely, Crime No.776/2015 registered on the file of C5 Karimedu Police Station. However, the Detaining Authority proceeded further to express a subjective satisfaction that there was real possibility of the detenu coming out on bail by filing a bail application, since in a similar case, not being a case of a co-accused in the very same case, another person was granted bail by the learned Principal Sessions Judge, Madurai. Such a comparison of bail order passed in another case, when no bail application is pending, to express subjective satisfaction of the real possibility of the detenu coming out on bail is against the dictum laid down by a Larger Bench of the Supreme Court in Rekha Vs. State of Tamil Nadu, reported in (2011) 5 SCC 244, followed by a Division Bench of the Hon'ble Supreme Court in Huidrom Konungjao Singh Vs. State of Manipur and others reported in (2012) 7 SCC 181 and a Division Bench of the Madras High Court in H.C.P.No.1154 of 2015, dated 11.08.2015 [Chandrakala Vs. The Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others]. Hence, as rightly contended by the learned counsel for the petitioner, the Order of Detention is vitiated on the said ground alone.

9. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 20.11.2015, made in No.159/BCDFGISSSV/2015, passed by the second respondent, the Commissioner of Police, Madurai City, Madurai and directs the release of the detenu, by name Prabhu, aged about 25 years, S/o.Subbiah forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub AssistantRegistrar

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise (IX) Department,
Fort.St.George, Chennai-600 009.
- 2.The Commissioner of Police,
Madurai City, Madurai.
- 3.The Joint Secretary to Government
Public (Law & Order)
Fort Saint George, Chennai-9.



4.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.R.Alagumani, Advocate SR.No.520/16

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Order made in
H.C.P. (MD) No.1651 of 2015
04.01.2016